

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MICHAEL J. BANKS, et al.,)
)
Plaintiffs,)
) Case No. 4:13CV02158ERW
v.)
)
FRANCIS G. SLAY, et al.,)
)
Defendants.)

BOARD DEFENDANTS' REPLY MEMORANDUM TO CO-COUNSEL
ROMINES'S RESPONSE TO ORAL ARGUMENT

Defendants Francis G. Slay, as ex-officio member of the St. Louis Board of Police Commissioners, Richard Gray, Thomas Irwin, Bettye-Battle Turner, and Erwin O. Switzer (the “Board Defendants”), by and through their undersigned counsel, hereby submit their Reply Memorandum to Plaintiffs’ Co-Counsel Romines’s Response to Oral Argument.

INTRODUCTION

The Court heard oral argument on the parties’ cross-motions for summary judgment on March 23, 2016. The total argument took approximately 90 minutes. Neither party asked the Court for leave to file additional briefing after the argument. On March 25, 2016, without seeking leave pursuant to Local Rule 7-4.01(C), Plaintiffs’ counsel Romines filed a two page correspondence addressed to this Court which discussed one argument

attributed to the Board Defendants' counsel. The Court deleted the filing and granted Plaintiffs five days to re-file in accordance with the Court's rules. Plaintiffs' counsel Romines re-filed the same correspondence ("Plaintiffs' response") on March 28, 2016, again without seeking leave pursuant to Local Rule 7-4.01(C).

ARGUMENT

Plaintiffs' response offers no guidance to the Court as it does not address an assertion made by the Board Defendants' counsel at oral argument. Plaintiffs' response indicated that counsel Romines was briefed on the argument-presumably without benefit of a transcript-and wanted to address "Defendants' argument that there is no state case affirming that judgment against a St. Louis City officer, named in his official capacity, must be paid out of City of St. Louis funds." While the Board Defendants' counsel also does not have the benefit of a transcript, the Board Defendants' counsel is very confident that he did not make that argument. Based upon the Board Defendants' counsel's recollection, the Board Defendants' counsel did assert to the Court that none of the parties' research had uncovered any case other than *Brandon v. Holt*, 469 U.S. 464 (1985), in which a Court held that a judgment against an individual in his official capacity, where the judgment did not also name the employing entity, was collectible against the official's employing entity.

First, that statement was certainly accurate as neither party had cited *Hill v. the City of St. Louis*, 371 S.W.3d 66, (Mo. App. 2010) at that point. In addition, *Hill* does not support Plaintiffs' position in this regard. In *Hill*, the City of St. Louis was named as a Defendant in addition to Sheriff Murphy in his official capacity. The court's footnote indicates that the City was subsequently removed, but does not indicate how or at what point in the litigation that occurred. *Id.* at 70, n.2. More importantly, the collectability of the judgment was not at issue, and the court specifically noted that the defendant did not contest that issue. *Id.* at 71, n. 4. Rather, the issue was only raised with regard to the propriety of plaintiff's closing argument. *Id.* at 71-72. Accordingly, the *Hill* case does not support Plaintiffs' position.

Respectfully submitted,

CHRIS KOSTER
Attorney General

/s/Robert J. Isaacson
Robert J. Isaacson, #38361
Assistant Attorney General
P.O. Box 861
St. Louis, Missouri 63188
(314) 340-7861 (Telephone)
(314) 340-7029 (Facsimile)
*Attorneys for Defendants Slay, Gray,
Irwin, Battle-Turner and Switzer*

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2016, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system to:

Robert Herman
8820 Ladue Road, Suite 201
St. Louis, MO 63124

Kenneth Romines
248 Rosemont Avenue
St. Louis, Missouri 63119

Brent Dulle
Associate City Counselor
City Hall Room 314
St. Louis, Mo 63103

/s/ Robert J. Isaacson
Robert J. Isaacson
Assistant Attorney General